IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.158 OF 2005
IN
WRIT PETITION NO.4165 OF 1985

Saifuddin Abbashbhai Kaka & Ors. ..Petitioners.

V/s.

The Bombay Mercantile Co-op.Bank Ltd.
& Ors. ..Respondents.

Mr.A.N.Maniyar for petitioners.

Mr.K.Y.Mandlik i/b. Mr.Hooseni Dostor & Co. for Respondent No.1.

Mr.P.C.Kansara i/b. Pandye & Poonawalle for Respondent No.5.

CORAM: A.M.KHANWILKAR,J
DATE : OCTOBER 24, 2007.

P.C. :

1. The grievance made in this Review Petition by the applicants, who were Opponent Nos. 3 and 4 in the original proceeding filed before the lower Cooperative Court, is that, the principal question that the Cooperative Court had no jurisdiction to try and decide the matter and further that the claim in the original proceeding at the instance of the Bank had become time barred, will have to be addressed irrespective of the statement made by the Bank that the award passed by the lower Cooperative Court has been satisfied. That grievance would have been valid if the award was to be pursued against the Petitioners/Opponent Nos. 3 and 4. As the Bank

accepts the position that the award has been fully satisfied by Opponent Nos. 1 and 2, nothing survives in the award, which was passed by the Cooperative Court. In other words, the said award cannot be proceeded further or enforced against the Petitioners/Original Opponent Nos.3 and 4.

2. Counsel for the Opposite party-Respondent Nos. 5(a) to 5(e) points out that the suit was filed between the partners in this court for dissolution of the firm. In the said proceedings, property from the Partnership firm was sold and the sale proceed was realised. Out of the said sale including auction purchaser has satisfied award-amount. The sale is not a subject matter of challenge. The award has already been satisfied, as is pointed out by the Bank and the other partners accepted the award, who were jointly and severally liable alongwith the Petitioners/Opponent Nos. 3 and 4. Satisfaction of the award is ascribable to the Opponent Nos. 1 and 2, who were the partners of the firm.

3. Thus understood, the issues raised on behalf of the Petitioners in the Review Petition, in my opinion, have become academic. No interference is warranted. In any case, not a case for review. Hence rejected.

(A.M.KHANWILKAR,J)